IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition Nos.678 and 679 of 2007

Andal .. Petitioner in HCP.678/07

Usha .. Petitioner in HCP.679/07

vs.

1. District Magistrate and
District Collector,
Tiruvannamalai District.

2. The Secretary to Government
of Tamil Nadu, Public (L&O) Dept.,
Fort St. George, Chennai-9. .. Respondents in both HCPs.

Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Habeas Corpus as stated therein.

For Petitioners : Mr.K.Chandasekaran
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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COMMON ORDER

(Made by P.D.DINAKARAN, J.)

H.C.P.No.678 of 2007 is filed by the mother of the detenu by name Pachaiyappan and H.C.P.No.679 of 2007 is by the wife of the detenu by name Palani against the orders of detention dated 18.4.2007 passed in D.O.No.22/2007-C2 and D.O.No.23/2007-C2 respectively, in exercise of the powers conferred under sub Section

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(2) of Section 3 of the National Security Act, 1980 (Central Act 65 of 1980), (hereinafter referred to as 'the Act') and in exercise of the powers conferred under Section 3(3) of the said Act read with orders issued by the Government in G.O.Ms.No.60, Public (L&O-F) Department dated 11.1.2007.

2.The petitioners sought to issue Writ of Habeas Corpus to call for the records in connection with the said orders of detention dated 18.4.2007, to quash the same and to direct the respondents to produce the detenus Pachaiyappan and Palani, now detained in Central Prison, Vellore and set them at liberty.

3.The ground case, which led the detaining authority to pass the impugned detention orders, was registered on the basis of the complaint given by one Joseph Raj on 31.3.2007 at about 13.00 hours. According to the complainant, who is serving as Priest of a Catholic Church, for the past three years, the Christians used to offer prayers at the hillock called 'Anjal Malai' at Iyengunum village, Tiruvannamalai Taluk and from the top of the hillock to its foot, the Christians have erected 14 Crosses and they used to conduct prayer on each and every Cross. It is alleged that on 31.3.2007 at 8.00 a.m., when the complainant went towards the hillock to offer prayer, he found all 14 Crosses to be broken and further, the pedestal of the iron Cross on the top of the hillock was also found damaged and in an insulting manner, chappals were hung on the iron Cross and "Om" and "Thrisoolam" signs were drawn. Based on the said complaint, a case was registered in Crime No.121 of 2007 on the file of Kilepennathur Police Station for offences under Sections 153(A) and 295 I.P.C. and investigation was taken up. During investigation, it was revealed that the detenus were alleged to have caused damages to the said Crosses at the hillock and they were arrested and produced before Judicial Magistrate No.II, Tiruvannamalai, who remanded them to judicial custody.

4.The detaining authority, the first respondent herein, taking note of the above ground case, having satisfied that the act of the detenus created ill feelings between the followers of Christian Community and Hindu community and developed hatred among the society and affected public order and public tranquility, and in order to defuse tension and to create confidence in the minds of all sections of people and to curb such illegal activities, ordered detention of both the detenus under the provisions of the Act.

5.The learned Counsel for the petitioners has contended that the detaining authority has failed to furnish the material document, viz., the complaint given by one of the detenus before the police against the installation of Crosses at the hillock,

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though reference has been made to the same in the detention order. He contends that the said material document was furnished to the detenu along with the rejection order, rejecting his representation to the Government seeking to set aside the order of detention. According to the learned Counsel for the petitioner, as per Section 8(1) of the NSA Act, the grounds on which the order has been made should be communicated to the detenu not later than ten days from the date of detention order. In the instant case, the said report has been furnished to the detenu after a delay of 23 days from the date of detention order, which has the effect of vitiating the detention order and thus, the detenus have to be released forthwith.

6. We heard the learned Additional Public Prosecutor on the above contention.

7.Before deciding the issue, it is apt to refer Section 8(1) of the National Security Act, which reads thus:

> "8.Grounds of order of detention to be disclosed to persons affected by the order – (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government."

8.It is well settled law that the grounds of detention must be communicated to the detenu without avoidable delay. It is only in order to meet the practical exigency of administrative affairs that the detaining authority is permitted to communicate the grounds of detention not less than 5 days ordinarily and not later than 10 days if there are exceptional circumstances. If there are any such exceptional circumstances, the detaining authority is required by Section 8(1) to record its reasons in writing.

9.1.The mandate enacted in the Section is a safety valve for a citizen who is robbed of his liberty and to disable the authorities from manipulating the grounds of detention. The section has to be interpreted literally. No relaxation is permissible. If the original time of 5 days has to be extended, such extension must be supported by an order recording reasons. If reasons are not so recorded, the order of detention will automatically fall. Even if reasons are recorded they have to

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inspire confidence in the Court and are subject to legal scrutiny. If the reasons are unsatisfactory Courts would still quash the order of detention, vide Hem Lall Bhandari v. State of Sikkim (1987) 2 SCC 9 : 1987 SCC (Cri) 262 : AIR 1987 SC 762 : 1987 Cri LJ 718.

9.2.What is material and mandatory is the communication of the grounds of detention to the detenu together with documents in support of subjective satisfaction reached by the detaining authority. When the representation has been made by the detenu to the appropriate Government or to the Advisory Board, it may be one of the grounds for him to impugn the order of detention that he was not supplied with the grounds within the time prescribed and thereby he was unjustifiably detained, without any reasonable justification. When such a ground has been raised and pressed for consideration, it would be for the detaining authority to satisfy the appropriate Government or Advisory Board in an appropriate case in the proceedings under Article 226 of the Constitution. The exceptional circumstances are those due to which the grounds and the documents could not be supplied to the detenu and the same were recorded in writing in the record of the detaining authority. If the appropriate Government or the Advisory Board or the Court are not satisfied with the recorded exceptional circumstances due to which the grounds of detention could not be supplied, after five days but before the expiry of 10 days, that may be one of the circumstances which the appropriate Government or Advisory Board or the Court may consider whether the detention order is vitiated or is an infraction of Article 22(5) of the Constitution, vide State of Rajasthan v. Talib Khan (1996) 11 SCC 393 : 1997 SCC (Cri) 29 : AIR 1997 SC 1559.

10.Coming to the case on hand, as rightly pointed out by the learned counsel for the petitioners, the detaining authority in para 2(b) of the grounds of detention, has made a reference to the report of one of the detenus, namely, Pachaiyappan, by stating as follows:-

> "..Further the said Thiru.Pachaiyappan was informed that somebody has threatened one lady that the said Thiru.Pachaiyappan should withdraw the report given in Kilpennathur Police Station regarding installation of Crosses by Christian Community. .."

From the above, it is clear that the detaining authority has taken into consideration the report given by the detenu Pachaiyappan to the police objecting the installation of Crosses in the hillock and thus, it is a material document. The said material document, admittedly, was furnished to the detenu only on 10.5.2007, along with the rejection order rejecting the

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representation of the detenu, which is not in strict compliance of Section 8(1) of the Act, as per which the grounds on which the detention order has been made, has to be communicated to the detenu, ordinarily not later than 5 days and in exceptional cases, within a period not later than 10 days, after recording sufficient reasons for such delay. Admittedly, the said material document was furnished to the detenu after a delay of 23 days from the date of detention and we find no material recording the reasons for such delay in furnishing the material document, which, in our considered opinion, is an infraction of Article 22 (5) of the Constitution, depriving of the opportunity of the detenus to submit their effective representation resisting the orders of detention. Thus, there is apparent violation of the procedure contemplated under Section 8(1) of the Act as well as Article 22(5) of the Constitution of India. Therefore, the Habeas Corpus Petitions are to be allowed on this ground.

In the result, the habeas corpus petitions are allowed and the orders of detention are set aside. The detenus are directed to be set at liberty forthwith, unless they are required in connection with any other case.

Sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The District Magistrate and
   District Collector,
   Tiruvannamalai District.

2. The Secretary to Government
   of Tamil Nadu, Public (L&O) Dept.,
   Fort St. George, Chennai-9.

3. The Superintendent,
   Central Prison, Vellore.

4. The Joint Secretary to Government,
   Public (Law and Order),
   Chennai-9.

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5. The Public Prosecutor,
   High Court, Madras.

• 1 cc to Mr. K. Chandrasekaran, Advocate SR No.67567

SCD(CO)
SR/11.12.2007

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